The Original Jurisdiction Paradox: How Modern Criminal Prosecutions May Violate Article III, Section 2

A Constitutional Analysis of State Criminal Jurisdiction and the Unresolved Tension in the Supreme Court's Original Jurisdiction Clause

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ABSTRACT

This article examines a fundamental but largely unexplored constitutional tension within Article III, Section 2 of the United States Constitution regarding the Supreme Court's original jurisdiction. While the text explicitly grants the Supreme Court original jurisdiction over "all Cases... in which a State shall be Party," the judiciary has consistently interpreted this language to exclude state criminal prosecutions—despite the fact that states are technically "parties" in every criminal case they bring. This article argues that this interpretation, while pragmatically necessary, represents a significant departure from the Constitution's plain text and raises serious questions about the constitutional legitimacy of certain categories of criminal prosecutions, particularly "victimless crimes" that lack an identifiable injured party. Drawing on Constitutional Convention debates, Federalist and Anti-Federalist writings, and historical case law, this analysis demonstrates that the Framers' intent regarding criminal jurisdiction remains ambiguous and that current doctrine may conflict with Article III's "Case or Controversy" requirement.

I. INTRODUCTION

The Constitution's treatment of criminal jurisdiction contains an apparent paradox. Article III, Section 2 states unequivocally: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and **those in which a State shall be Party**, the supreme Court shall have original Jurisdiction."[1] Yet in the same section, the Constitution mandates: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed."[2]

These two provisions appear irreconcilable if state criminal prosecutions are considered "Cases in which a State shall be Party." Since 1826, the Supreme Court has resolved this tension through narrow interpretation, holding in *United States v. Ortega* that criminal prosecutions do not "affect" the relevant parties within the meaning of the original jurisdiction clause.[3] However, this interpretation requires adding language and limitations not present in the Constitution's text—namely, distinguishing between "Cases" and "Controversies" and narrowly defining what it means for a case to "affect" a party.

This article argues that while the Court's interpretation may be pragmatically necessary to avoid absurd results, it highlights a deeper constitutional problem: **the legitimacy of criminal prosecutions, particularly victimless crimes, under Article III's "Case or Controversy" requirement**. If the state is not truly a "party" with a cognizable interest in criminal prosecutions, as *Ortega* suggests, then what constitutional authority supports such prosecutions, especially where no private party has been injured?

II. THE CONSTITUTIONAL TEXT AND ITS DRAFTING HISTORY

A. The Language of Article III, Section 2

The relevant constitutional text reads:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction."[4]

Three features of this language merit special attention:

First, the Constitution uses two distinct terms: "**Cases**" and "**Controversies**." Scholars have long debated whether this distinction is meaningful.[5] The Supreme Court has held that if distinguishable at all, "controversy" is narrower, encompassing only civil disputes.[6]

Second, the original jurisdiction clause uses the word "**Cases**" (not "controversies") when referring to situations "in which a State shall be Party." This is significant because "Cases" ostensibly includes both civil and criminal proceedings.

Third, the phrase is **"State shall be Party"**—not "State shall be plaintiff" or "State shall be defendant." The text is neutral as to which role the state occupies.

B. The Committee of Detail's Drafting

Article III, Section 2 was primarily drafted by the Committee of Detail, established on July 24, 1787, during the Constitutional Convention.[7] The committee consisted of:

- **John Rutledge** (South Carolina) – Chairman
- **James Wilson** (Pennsylvania) – Legal scholar who prepared final drafts
- **Edmund Randolph** (Virginia) – Prepared initial draft
- **Oliver Ellsworth** (Connecticut)
- **Nathaniel Gorham** (Massachusetts)

According to Madison's notes from August 6, 1787, the Committee of Detail's initial report stated: "Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States... In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original."

Notably, in the same report, Section 4 specified: "The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury."

This juxtaposition raises the central question: If "State shall be party" includes criminal prosecutions, how can those trials occur "in the State where they shall be committed" rather than in the Supreme Court's original jurisdiction?

C. The Framers' Understanding of "Cases" vs. "Controversies"

During the Convention, delegates expressed concern about whether certain disputes qualified as matters of "a Judiciary Nature." Madison noted that there were disputes arising under federal law that were "not of a Judiciary Nature," but the Convention records don't specify what Madison and other Framers understood this phrase to mean.

The lack of extended debate on this specific point suggests either:

1. The Framers assumed the distinction was obvious, or
2. They deliberately left the language ambiguous to allow future interpretation

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III. THE ANTI-FEDERALIST WARNINGS

A. Brutus's Prescient Concerns

The Anti-Federalist writer known as "Brutus" (likely Robert Yates of New York)[8] provided the most comprehensive critique of Article III's judicial power. His concerns about federal judicial overreach were remarkably prescient.

Brutus warned: "There is no power above [the judiciary], to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself."

He further argued that "the power given to the judiciary will extend legislative authority, increase the jurisdiction of the courts, and diminish and destroy both the legislative and judiciary powers of the states."

Brutus identified the core problem: The federal judiciary's independence, combined with its broad jurisdiction over "all Cases" arising under federal law, would inevitably lead to expansion of federal power at state expense.

B. Concerns About Judicial Consolidation

Brutus "viewed the judicial power as the vehicle of consolidation" and "objected to Congress's power to ordain and establish lower federal courts. He thought the state courts were adequate to handle every case arising under the Constitution in the first instance, and he favored a limited right of appeal to the Supreme Court."

Anti-Federalists generally "viewed the federal judiciary as a source of danger to individual liberty, the state judiciaries, and the future existence of the states themselves." They worried that federal jurisdiction was too broad and that as federal power grew, state judiciaries would be marginalized.

C. The Federal Farmer on Distance and Access

The Federal Farmer (likely Richard Henry Lee) expressed practical concerns: "I think it one of the greatest benefits in a good government, that each citizen should find a court of justice within a reasonable distance, perhaps, within a day's travel of his home; so that, without great inconveniences and enormous expenses, he may have the advantages of his witnesses and jury."

This concern directly relates to our central question: If state criminal prosecutions fell under Supreme Court original jurisdiction, defendants would face the exact hardship the Federal Farmer warned against—being forced to travel potentially thousands of miles to defend themselves.

IV. THE FEDERALIST DEFENSE

A. Hamilton's Reassurances in Federalist No. 78 and 81

Alexander Hamilton attempted to assuage fears about judicial power in his Federalist Papers essays on the judiciary.

Hamilton argued that the judiciary would be "the least dangerous" branch because it possessed "neither FORCE nor WILL, but merely judgment."[9] However, he did not directly address the question of whether criminal prosecutions would fall under original jurisdiction when a state is a party.

Regarding original jurisdiction specifically, Hamilton noted in Federalist No. 81 that cases involving ambassadors required Supreme Court original jurisdiction because such cases were "so directly connected with the public peace" that they should be submitted "in the first instance to the highest judicatory of the nation."[10]

Notably, Hamilton did not extend this reasoning to all cases where a state is a party, suggesting he may not have contemplated criminal prosecutions falling under this category.

B. The Framers' Compromise: Local Criminal Justice

The Constitution's guarantee of local jury trials for crimes represented a fundamental compromise: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed."

This provision reflected deep-seated colonial opposition to:

- Transporting accused persons far from their homes for trial
- Trial by judges alone without juries
- Centralized prosecutorial power

Historical records show that "the delegates twice raised the issue of whether the Constitution should include a right to a jury trial" and eventually guaranteed it "on the high ground of constitutional right."

The tension is clear: The Framers simultaneously wanted to preserve local criminal justice (through local jury trials) while establishing Supreme Court original jurisdiction over cases where

states are parties. These goals conflict if criminal prosecutions are included in the latter category.

V. UNITED STATES V. ORTEGA: THE SUPREME COURT'S RESOLUTION

A. The Case and Its Facts

The Supreme Court first directly addressed this constitutional tension in *United States v. Ortega* (1826).[11]

Juan Gualberto de Ortega was indicted in federal circuit court for assaulting Hilario de Rivas y Salmon, the Spanish Ambassador to the United States.[12] Ortega moved to dismiss, arguing that because the Constitution grants the Supreme Court original jurisdiction over "all Cases affecting ambassadors," and because this was a criminal case involving an assault on an ambassador, the circuit court lacked jurisdiction.[13]

Ortega's argument paralleled the one made here: If the Constitution says "all Cases affecting ambassadors" get original jurisdiction, and this is a Case (criminal prosecution) affecting an ambassador (the victim), then original jurisdiction applies.

B. The Court's Narrow Interpretation

The Supreme Court rejected Ortega's argument, holding:

> "This is not a case affecting a public minister, within the plain meaning of the constitution. It is that of a public prosecution, instituted and conducted by and in the name of the United States, for the purpose of vindicating the law of nations, and that of the United States, offended, as the indictment charges, in the person of a public minister, by an assault committed on him by a private individual."[14]

The Court continued:

> "It is a case, then, which affects the United States, and the individual whom they seek to punish; but one in which the minister himself, although he was the person injured by the assault, has no concern, either in the event of the prosecution, or in the costs attending it."[15]

C. The Interpretive Maneuver

Ortega resolved the textual problem by **narrowly construing what it means to "affect" a party**. According to the Court:

- A case "affects" someone only if they are a party with a stake in the outcome
- In criminal prosecutions, victims are not parties
- Therefore, criminal prosecutions don't "affect" the victim in the Article III sense
- By extension, when a state prosecutes criminally, the state is not a "party" within the meaning of original jurisdiction

This interpretation adds language not present in the Constitution. The text says "all Cases" and "State shall be Party"—it does not say "Cases where the state has a civil interest as a litigant" or "Cases affecting the state's proprietary interests."

VI. THE CONSTITUTIONAL PROBLEM: CRIMINAL PROSECUTIONS AS "CASES"

A. What Makes a "Case" Under Article III?

The Constitution extends judicial power to "Cases" and "Controversies" but doesn't define these terms. Modern Supreme Court doctrine holds that Article III requires:

1. **Actual controversy** between adverse parties
2. **Concrete stake** in the outcome
3. **Standing** to sue (injury in fact, causation, redressability)[16]

The question becomes: In criminal prosecutions, particularly victimless crimes, who is the injured party with standing?

B. The State as Sovereign vs. State as Party

Ortega distinguished between:

- The state exercising **sovereign power** to punish crime
- The state acting as a **civil party** pursuing its interests

But this distinction, while pragmatically necessary, creates a conceptual problem. If the state is merely exercising sovereign power (not acting as a true "party"), then on what Article III authority do federal courts hear criminal cases?

The answer typically given is that criminal prosecutions are "Cases arising under" federal law. But this doesn't fully resolve the issue, because:

1. Not all crimes involve federal interests
2. The "arising under" clause should still require a "case"
3. A "case" requires parties with concrete interests

C. The Problem of Victimless Crimes

This constitutional tension becomes most acute with so-called "victimless crimes":

- Drug possession for personal use
- Gambling
- Prostitution (consensual)
- Regulatory offenses with no specific harm
- Status crimes

In these cases, who is the injured party?

Traditional answers include:

- "Society" is injured
- The state represents the collective interest
- Public morals are protected
- Prevention of future harm justifies prosecution

But these answers raise Article III problems:

1. **Generalized grievances**: The Supreme Court has held that "generalized grievances" about government behavior don't create standing.[17] If no specific individual is injured, is there a "case"?

2. **The state as plaintiff**: If the state is the plaintiff (as *Ortega* suggests it is not in criminal cases), shouldn't original jurisdiction apply?

3. **No concrete controversy**: Without an identifiable injured party, is there truly a "controversy" of a "Judiciary Nature"?

VII. HISTORICAL UNDERSTANDING OF CRIME AND INJURY

A. Common Law Tradition

At common law, most serious crimes had identifiable victims:

- Murder → victim's family
- Theft → property owner
- Assault → injured person

- Fraud → deceived party

The Crown prosecuted not as an injured party but as sovereign enforcing the King's Peace. However, victims often initiated prosecutions and had recognized interests in the outcome.

B. The Shift to Purely Public Prosecution

American criminal law evolved toward a model where:

- The state alone brings charges
- Victims have no legal control over prosecution
- The state's interest is abstract ("public welfare")
- No showing of specific injury is required for many crimes

This evolution may have constitutional implications. If the Framers understood "Cases" to require actual parties with actual interests, purely public prosecutions for victimless offenses might fall outside Article III power.

VIII. THE TEXTUAL ARGUMENT REVISITED

A. Plain Text Analysis

Let us return to the constitutional text with fresh eyes:

> "In all **Cases** affecting Ambassadors, other public Ministers and Consuls, and those in which a **State shall be Party**, the supreme Court shall have original Jurisdiction."

Textual observations:

1. **"Cases"** – Not "civil cases" or "controversies," but "**Cases**"
    - This term appears to be broader than "controversies"
    - Prima facie includes criminal cases
2. **"State shall be Party"** – Not "State as civil litigant"
    - In every criminal prosecution, caption reads "State of [X] v. Defendant"
    - The state is literally a named party
3. **"All Cases"** – No exceptions listed
    - Constitution doesn't say "except criminal prosecutions"
    - If Framers wanted to exclude criminal cases, they could have said so

B. The Counterargument: Structural Reading

Opponents of this textual reading argue:

1. **Same section mandates local criminal trials**
    - Cannot give original jurisdiction to Supreme Court
    - Must read provisions in harmony
2. **"Cases" vs. "Controversies" distinction**
    - "Cases" in first part includes criminal
    - "State be Party" clause refers back to "controversies"
    - Therefore only civil cases included
3. **Absurdity canon**
    - Reading this to include all criminal cases would be absurd
    - Would overwhelm Supreme Court
    - Cannot have been intended

C. The Problem with the Counterargument

While the counterargument has force, it requires:

1. **Adding words** to the Constitution (limiting "Cases" to "civil cases")
2. **Assuming** the Framers linked "State be Party" only to "Controversies"
3. **Interpreting away** the plain meaning of "all Cases"

Moreover, **the absurdity argument proves too much**. If requiring all state criminal cases to go to Supreme Court is absurd (it is), then how did the Framers fail to foresee this problem?

Two possibilities:

1. They didn't intend "State be Party" to include criminal prosecutions (supporting narrow reading)
2. They didn't consider criminal prosecutions to be true "Cases" involving the state as a party (supporting the victimless crime critique)

IX. IMPLICATIONS FOR MODERN CRIMINAL LAW

A. State Criminal Prosecutions

Under current doctrine, state criminal prosecutions:

- Begin in state trial courts
- May be appealed through state courts

- Reach Supreme Court only via appellate jurisdiction (if at all)
- Do not fall under original jurisdiction

This works because states have inherent police power reserved under the Tenth Amendment. States prosecute crimes not as an Article III "judicial power" matter but as an exercise of sovereign authority.

B. Federal Criminal Prosecutions

Federal criminal prosecutions raise more serious constitutional questions because:

1. **No general police power**: The federal government lacks inherent police power
2. **Enumerated powers only**: Federal prosecution must tie to enumerated power
3. **Article III requirements still apply**: Federal prosecutions must be "Cases"

The constitutional question: When the federal government prosecutes a "victimless crime" not clearly tied to an enumerated power, on what Article III authority does it proceed?

C. The Commerce Clause Connection

Most federal criminal jurisdiction now derives from the Commerce Clause.[18] But this raises the original question: Is a commerce violation with no injured party a "Case" under Article III?

Consider:

- Drug possession (intrastate, personal use)
- Gun possession near school zone (no threat, no victim)
- Regulatory violations (no harm occurred)

These prosecutions require two findings:

1. **Commerce Clause power** (substantive authority)
2. **Article III "Case"** (judicial power to adjudicate)

The Supreme Court has imposed limits on Commerce Clause power (*Lopez*, *Morrison*)[19] but has not seriously examined whether victimless prosecutions satisfy Article III's case requirement.

X. THE STANDING DOCTRINE ANALOGY

A. Standing in Civil Cases

In civil cases, Article III standing requires:[20]

1. **Injury in fact** – concrete and particularized harm
2. **Causation** – fairly traceable to defendant's conduct
3. **Redressability** – likely to be redressed by favorable decision

The Supreme Court has been increasingly strict about standing, rejecting:

- Generalized grievances about government conduct
- Speculative or conjectural injuries
- Third-party standing (with exceptions)

B. The Parallel to Criminal Cases

If standing requirements flow from Article III's "Case or Controversy" requirement, **shouldn't criminal prosecutions also require these elements?**

In a victimless crime prosecution:

- **Who has suffered injury in fact?** ("Society" is too generalized)
- **What is the causation?** (No victim to trace harm to)
- **What is redressed?** (No victim to compensate)

The state's response has traditionally been that criminal law serves different purposes:

- Deterrence
- Retribution
- Public safety
- Moral condemnation

But **none of these directly addresses Article III's requirement of a "Case"** between actual parties with actual interests.

C. *Lujan v. Defenders of Wildlife*

In *Lujan v. Defenders of Wildlife* (1992),[21] the Supreme Court rejected standing for plaintiffs who alleged generalized harm to the environment, finding they lacked concrete, particularized injury.

Justice Scalia wrote that the injury must affect the plaintiff "in a personal and individual way."[22]

The question becomes: If a generalized concern about environmental protection doesn't create standing in a civil case, how does a generalized concern about drug use or gambling create a "Case" in a criminal prosecution?

XI. THE FEDERALISM DIMENSION

A. State Sovereignty and Criminal Law

One argument supporting broad state criminal jurisdiction is:

- States are sovereign
- States retained police power in the Constitution
- Criminal law is traditionally state concern
- Article III limits don't constrain state sovereignty in the same way

This argument has force for **state** prosecutions but doesn't resolve:

1. The textual problem (state still "Party")
2. The federal prosecution problem (no reserved sovereignty)
3. The victimless crime problem (still requires "Case")

B. The Tenth Amendment

The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[23]

This supports state criminal jurisdiction as an exercise of reserved powers, not federal judicial power. But it doesn't eliminate Article III's requirements—it simply places state criminal law outside Article III's scope (as an exercise of sovereignty, not judicial power).

This actually supports the narrow reading of "State be Party": If state criminal prosecutions are exercises of state sovereignty (not federal judicial power), they're not Article III "Cases" at all, which is why they don't fall under original jurisdiction.

XII. CONCLUSION: AN UNRESOLVED CONSTITUTIONAL TENSION

A. Summary of the Argument

This analysis has demonstrated:

1. **Textual ambiguity**: The Constitution's language appears to include state criminal prosecutions within original jurisdiction ("all Cases in which a State shall be Party")

2. **Practical impossibility**: Applying this literally would contradict the guarantee of local criminal jury trials

3. **Judicial resolution**: *Ortega* resolved this through narrow construction, holding criminal prosecutions don't "affect" parties in the Article III sense

4. **Underlying problem**: If states aren't truly "parties" in criminal prosecutions, this raises questions about whether such prosecutions are "Cases" under Article III

5. **Victimless crimes**: The problem is most acute for prosecutions lacking identifiable injured parties

B. The Constitutional Question Remains

The central question persists: If criminal prosecutions are not "Cases in which a State shall be Party" (as *Ortega* holds), then what Article III authority supports federal criminal prosecutions, particularly for victimless crimes?

Possible answers:

1. **Criminal prosecutions are "Cases arising under" federal law**
    - Response: But "Cases" still requires parties with interests
2. **Criminal law is a sovereign function, not judicial power**
    - Response: Then federal criminal law may exceed Article III authority
3. **"Society" is the injured party with standing**
    - Response: Supreme Court rejects generalized grievances in civil cases
4. **The Framers didn't intend Article III to limit criminal prosecutions**
    - Response: Then why use the term "Cases"?

C. Implications for Reform

This constitutional analysis suggests several potential reforms:

1. Narrowing Federal Criminal Jurisdiction

- Limit to crimes with clear enumerated power basis
- Require showing of interstate effect or federal interest
- Return most criminal law to states

2. Requiring Victim Impact for Prosecution

- Mandate identifiable injured party for federal prosecution
- Allow standing challenges to victimless prosecutions
- Restore common-law tradition of crime requiring harm

3. Constitutional Amendment

- Clarify that criminal prosecutions are excluded from "State be Party" clause
- Explicitly address federal criminal jurisdiction
- Define "Cases" to include or exclude purely public prosecutions

4. Judicial Reconsideration

- Supreme Court could revisit *Ortega*'s foundations
- Apply modern standing doctrine to criminal law
- Develop coherent theory of "Cases" that includes criminal law

D. Final Observations

The Framers created a system of limited, enumerated powers with structural protections for liberty. Criminal law represents the most direct exercise of government coercion over individuals. Yet the constitutional foundations for much of modern criminal law—particularly federal prosecutions for victimless crimes—remain theoretically weak.

As the Federal Judicial Center notes, the Constitution's provisions for the judiciary "reflected the conventions' debate on the appointment of judges, the institutional independence of the third branch, and the value of lower federal courts." But that debate never fully resolved the tension between broad judicial power and limited government.

The text of Article III remains: "In all Cases... in which a State shall be Party, the supreme Court shall have original Jurisdiction." Whether criminal prosecutions fall within this language is not merely an academic question—it goes to the heart of whether our current system of criminal justice, particularly federal prosecution of victimless offenses, rests on solid constitutional ground.

This article does not advocate for the abolition of criminal law or suggest all prosecutions are unconstitutional. Rather, it argues that the constitutional foundations deserve more rigorous examination than they have received. The Framers' compromise—giving states broad police power while limiting federal authority—may require us to reconsider the scope of both state and federal criminal jurisdiction in light of Article III's actual text and original meaning.

As Anti-Federalist Brutus warned, unchecked judicial power combined with expansive federal jurisdiction threatens both federalism and individual liberty. Two centuries later, his concerns merit renewed attention as we confront a federal criminal code containing thousands of offenses, many lacking any identifiable victim, prosecuted under Article III authority whose constitutional basis remains, at best, ambiguous.

ENDNOTES

[1] U.S. CONST. art. III, § 2, cl. 2.

[2] U.S. CONST. art. III, § 2, cl. 3.

[3] United States v. Ortega, 24 U.S. (11 Wheat.) 467 (1826).

[4] U.S. CONST. art. III, § 2, cl. 1-2.

[5] See Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239-40 (1937).

[6] Id. at 240 ("[C]ontroversy, if distinguishable from case at all, is so only because it is a less comprehensive word and includes only suits of a civil nature.").

[7] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 97 (Max Farrand ed., 1911).

[8] Most scholars attribute the Brutus essays to Robert Yates. See generally THE ANTI-FEDERALIST PAPERS (Ralph Ketcham ed., 2003).

[9] THE FEDERALIST NO. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

[10] THE FEDERALIST NO. 81 (Alexander Hamilton).

[11] 24 U.S. (11 Wheat.) 467 (1826).

[12] Id. at 467-68.

[13] Id. at 468.

[14] Id. at 469.

[15] Id.

[16] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

[17] Id. at 573-74.

[18] See, e.g., Gonzales v. Raich, 545 U.S. 1 (2005) (upholding federal marijuana prohibition under Commerce Clause).

[19] United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000).

[20] Lujan, 504 U.S. at 560-61.

[21] Id.

[22] Id. at 560 n.1.

[23] U.S. CONST. amend. X.

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